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SUBJECT MATTER.

CASES CITED.

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

THE UNITED STATES OF AMERICA, OWNER of the steamships Clio, Mooseabee, Fort Logan, and Morganza et al.,

v.

AMOS D. CARVER AND JOSEPH B. MORRELL, copartners doing business under the firm name and style of Baker, Carver, and Morrell.

No. 402.

ON CERTIFICATE FROM UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES OF AMERICA.

NATURE OF THE CASE.

This case comes before this court on certificate from the Circuit Court of Appeals for the Second Circuit, to which court the United States of America had taken an appeal from the decree entered against it in the District Court for the Southern District of New York. The case involves the liability of vessels under the "Act relating to liens on vessels," etc., approved June 23, 1910, 36 St. L. 604, and the "Merchant Marine Act of 1920," approved June 5, 1920, 41 St. L. 1005, and that of the United States under

the "Act Authorizing suits against the United States in admiralty," etc., approved March 9, 1920, 41 St. L. 525.

STATEMENT OF FACTS.

The Circuit Court of Appeals made the following findings of fact:

> At all the times hereinafter mentioned the steamships *Clio* and *Morganza* belonged to the United States, but were in the possession of State Steamship Corporation, a company of the State of Delaware, as charterers.
>
> Libellants are copartners, engaged in ship chandlery, and were, in respect of all transactions giving rise to this litigation, represented solely by one Cunningham, a salesman of theirs. Cunningham sold many articles of the kind known as "supplies" or "necessaries" in maritime law to State Steamship Corporation; he dealt with one Prosser, who was "marine superintendent" or "port captain" for said corporation, and as such charged with the duty of procuring supplies for such vessels as it operated, including *Clio* and *Morganza*.
>
> In the spring of 1920, and not later than April 20, libellants, as the result of orders obtained as above, delivered to and aboard of *Clio* certain supplies and rendered bills for same made out to "S. S. *Clio*" and owners, "State S. S. Corp."
>
> Down to the completion of deliveries to "*Clio*" there is no evidence that libellants or Cunningham knew of any charter by the United States to State Corporation, or knew

any fact tending to show that said corporation did not own *Clio*.

That vessel was, in fact, operated by State S. S. Corporation under a charter mutatis mutandis like that of *Morganza* (*infra*).

In August, 1920, Cunningham went to Washington, D. C., on business which brought him before the United States Shipping Board, or representatives thereof. While in Washington, or shortly before going, he learned that *Clio* and *Morganza* were in State Corporation's possession under what he described as "partial payment purchases." He never made any inquiry to discover what that phrase meant, although it was easy so to do. If he had asked he would have learned in Washington, and at once, that *Morganza* had (on December 8, 1919) been chartered to State Corporation by the owners for one year, hire payable monthly in advance, and that said charter contained the following agreement:

"The charterers shall, at their sole expense, man, operate, victual, and supply said vessel, the master and chief engineer, however, to be subject to the approval of the owner.

"The charterers shall pay all port charges, pilotages, and all other costs and expenses incident to the use and operation of said vessel. * * *

"The charterers will not suffer nor permit to be continued any lien, encumbrance, or charge which has or might have priority over the title and interest of the owner in said vessel; but the charterers will in due course, and in any event within fifteen days after the same

becomes due and payable, pay, discharge, or make adequate provision for the satisfaction or discharge of every lawful claim or demand which, if unpaid, might, in equity, in admiralty, at law, or by any statute of this or any other nation where said vessel may be navigating or berthed, have priority over the said title and interest, or might operate as a lien, encumbrance, or charge upon said vessel, or cause its detention in port, or will cause said vessel to be released or discharged from any such lien, encumbrance, or charge in any event within fifteen days after such lien, encumbrance, or charge is imposed upon said vessel. * * *

"In general the charterers shall operate the said vessel free of any expense to the owner of any nature or kind whatsoever."

He would further have learned of the following charter clause, which is the sole reason furnished by said document or any other evidence for the phrase "partial payment purchase."

"If the charterers shall have duly paid all the charter hire and shall not then be in default in respect of any of the terms, covenants, or conditions of this charter party, then at the expiration of one year from the date of the delivery of said vessel the charterers shall have the option to purchase said vessel at the cash price of $103 per dead-weight ton on the basis of the dead-weight tonnage, as stated in the caption hereof, hire theretofore paid to be applied on said purchase price. The exercise of said option shall be simultaneous with the termination of this charter party, and the

charterers shall give ten days' notice (in writing) of intention to exercise same."

We find that Cunningham was in August, 1920, well aware of facts and circumstances putting him and his employers and principals on enquiry, and made no enquiry, but preferred or chose to avoid the same.

On returning to New York Cunningham sold through Prosser, as before, and delivered to and on board *Morganza* certain other "supplies," and bills for same were rendered to "S/S *Morganza*" and owners, "State S/S Corp." Such delivery was complete, and bills rendered by September 30th, 1920.

Neither the captain nor any other officer of either *Clio* or *Morganza* had anything to do with the matters hereinabove detailed.

On October 7, 1920, an involuntary petition in bankruptcy was filed against State Steamship Corporation; it has since been adjudicated and is insolvent.

On October 15, 1920, the libel herein was filed, asserting that for the agreed price of said supplies libellants had, or would have had if the steamers had been privately owned, maritime liens against *Clio* and *Morganza*, respectively, the amount of each lien being the price of what went aboard one vessel; and further alleging liability in respect of both demands on the part of the United States.

POINTS INVOLVED AND QUESTIONS CERTIFIED.

The liability of State S. S. Corporation in personam and in admiralty for said supplies was and is clearly proved.

The liability of the vessels is asserted under the "Act relating to liens on vessels," etc., approved June 23, 1910, and "The merchant marine act, 1920," approved June 5, 1920; and that of the United States under the "Act authorizing suits against the United States in admiralty, etc.," approved March 9, 1920. The District Court granted decree for the agreed prices of said supplies, etc., against the United States, with right of recovery over (after payment) from the estate in bankruptcy of State S. S. Corporation. Whereupon the United States appealed.

QUESTIONS CERTIFIED.

Under the statutes enumerated, or any of them:

(1) Would maritime lien for necessaries or supplies have arisen as against *Clio* had that vessel been privately owned?

(2) Would a maritime lien for necessaries or supplies have arisen as against *Morganza* had that vessel been privately owned?

If either or both of the foregoing questions are answered in the affirmative—

(3) Is the United States liable for the amount of what would have been a lien had the vessel affected been privately owned?

If either or both of questions 1 and 2 are answered in the negative—

(4) Is the United States liable for the personal indebtedness of State S. S. Corporation, in respect of supplies and necessaries furnished to a vessel, in respect of which no maritime lien would have arisen, had such vessel been privately owned?

SUMMARY OF ARGUMENT.

I. Maritime liens for necessaries or supplies would not have arisen against either the *Clio* or *Morganza* had both vessels been privately owned.

(*a*) The person ordering the "supplies" or "necessaries" was without authority from the owner to impose maritime liens on either the *Clio* or *Morganza*.

(*b*) The fact that the order for the supplies came from a shore agent and not from the master put the supply man on inquiry as to the extent of the authority of the person giving the order to bind the vessel. His failure to make any inquiry rebuts any possible presumption of authority in the person giving the order to impose liens on the vessel.

(*c*) Any possible presumption of authority in the person ordering the supplies for the *Morganza* to impose a maritime lien on the vessel is rebutted by knowledge in fact in the supply man of his lack of such authority.

II. The United States is not liable for what would have been a maritime lien had the vessels affected been privately owned.

III. The United States is not liable for the personal indebtedness of the State Steamship Corporation in respect of supplies and necessaries furnished to a vessel in respect of which no maritime lien would have arisen had such vessel been privately owned.

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ARGUMENT.

I.

Maritime liens for necessaries or supplies would not have arisen against either the "Clio" or "Morganza" had both vessels been privately owned.

I–A.

The person ordering the "supplies" or "necessaries" was without authority from the owner to impose maritime liens on either the "Clio" or "Morganza."

The "supplies" or "necessaries" were all ordered by one Samuel Prosser, marine superintendent or port captain of the States Steamship Corporation, the charterer. It was his duty to procure supplies for such vessels as were operated by the States Steamship Corporation, the charterer, including the *Clio* and *Morganza*. (Rec. 1.) Neither the captain nor any officer of either the *Clio* or *Morganza* had anything to do with the ordering of the supplies. (Rec. 3.) Such authority as Prosser had was by virtue of his appointment as port captain or marine superintendent by the States Steamship Corporation and was derived from his principal, the charterer of the two vessels.

By the terms of the charter party between it and the owner the States Steamship Corporation was to provide and pay for the supplies in question. The specific provision of the charter is as follows:

> The charterers shall, at their sole expense, man, operate, victual, and supply said vessel, the master and chief engineer, however, to be subject to the approval of the owner.

> The charterers shall pay all port charges, pilotages, and all other costs and expenses incident to the use and operation of said vessel.
>
> * * * * *
>
> In general the charterers shall operate the said vessel free of any expense to the owner of any nature or kind whatsoever.

A charterer has no authority to impose liens on a vessel for supplies which it has agreed to provide and pay for.

In *The Kate*, 164 U. S. 458, 465, Mr. Justice Harlan said:

> As the charterer had agreed to provide and pay for all coal used by the vessel, he had no authority to bind the vessel for the supplies furnished to it.

A year later, in the *Valencia*, 165 U. S. 262, 272, Mr. Justice Harlan said:

> Under what circumstances, if under any, a charterer who has control and possession of a vessel under a charter party requiring him, at his own cost, to provide for necessary supplies and repairs, may pledge the credit of the vessel, it is not necessary now to determine. We mean only to decide, at this time, that one furnishing supplies or making repairs on the order simply of a person or corporation acquiring the control and possession of a vessel under such a charter party can not acquire a maritime lien if the circumstances attending the transaction put him on inquiry as to the existence and terms of such charter party, but he failed to make inquiry, and chose to act on a mere belief that the vessel would be liable for his claim.

This rule as laid down in the *Kate* and the *Valencia* has been repeatedly followed in the lower Federal courts.

The Oceana, 244 Fed. 80 (2d Cir.).
The Hatteras, 255 Fed. 518 (2d Cir.):
The Cratheus, 263 Fed. 693 (5th Cir.).
The Pensacola Shipping Co. v. *Fleet Corp.*, 277 Fed. 889 (5th Cir.).

It may be argued that this charter party contains a provision similar to that involved in the *South Coast*, 251 U. S. 518, and it was held in that case that the charterer had authority to impose liens on the vessel. The *South Coast case* involved facts essentially different from those in the instant case. *There the supplies were ordered by the master, who had been appointed by the owner.* The supplies in this case were ordered by a shore agent appointed by the charterer. This fact seems to have been in the mind of all three courts which considered the *South Coast case*. The District Court, 233 Fed. 327, said:

> But by the charter in the instant case the person ordering the supplies—that is to say, the master—was not without authority to bind the vessel therefor.

The Circuit Court of Appeals, 247 Fed. 84, 86, held:

> There is a divergence of opinion among the cases as to whether a charter party of the nature and character of the one herein involved withdraws the authority of the master to act for the owner in the ordering of repairs, supplies, etc. * * *

And again, page 88:

> Now, coming to the instant controversy: The repairs and supplies in question were furnished on the order of the master. The master, who was appointed by the owner, was obliged, under the charter party, to take his directions from the charterer.

This court said, 251 U. S. 518, 522:

> Both courts, however, held that the charter gave the master power to create the lien.

What the court meant was that the master had power by the general maritime law to create liens unless the charter party excluded the possession of such power, for the court said, 523:

> Unless the charter excluded the master's power the owner could not forbid its use. The charter party recognizes that liens may be imposed by the charterers and allowed to stand for less than a month and there seems to be no sufficient reason for supposing the words not to refer to all the ordinary maritime liens recognized by the law. The statute had given a lien for supplies in a domestic port, and therefore had made that one of these ordinary liens. Therefore the charterer was assumed to have power to authorize the master to impose a lien in a domestic port, and if the assumption expressed in words was not equivalent to a grant of power at least it can not be taken to have excluded it. *There was nothing from which the furnisher could have ascertained that the master did not have power to bind the ship.* (Italics ours.)

The *South Coast case* was considered by the Circuit Court of Appeals for the Ninth Circuit in the *Portland*, 273 Fed. 401. The same three judges were sitting who decided the *South Coast case* in that court. In speaking of it Judge Hunt said, page 404:

> The real ground for the ruling in the *South Coast* was that the supplies were furnished on orders from the master, and the master had the power to impose a lien unless the charter party excluded the possession of such power. Some of the cases cited by the appellant are to the effect that one knowing that he is dealing with a charterer is put on inquiry as to the terms of the charter party. The *Oceana* (D. C.) 233 Fed. 139; *Id.* 244, Fed. 80; 156 C. C. A. 508; *The Castor*, 267 Fed. 608. That rule can be accepted without disturbance of the authority of the *South Coast* for holding that, libelant having delivered supplies upon the master's orders, and the master having been authorized to order supplies for the vessel, and there being no clause in the charter which in any way prohibited the master from exercising such authority, it has a lien which has not been defeated.

The distinction between supplies ordered by a master and those ordered by a charterer or a shore agent is well established.

In *Thomas* against *Osborne*, 19 How. 22, this court then held that the fact that the master was also charterer and owner pro hac vice did not deprive him of the authority granted by the general maritime law to a master to subject the vessel to liens for necessary supplies or advances.

In the *St. Jago de Cuba*, 9 Wheaton, 409, 414, this court held:

> The law maritime attaches the power of pledging or subjecting the vessel to material men, to the office of ship master; and considers the owner as vesting him with those powers, by the mere act of constituting him shipmaster.

In the *Arora*, 1 Wheaton, 96, 101, Mr. Justice Story said:

> The master of the ship is the confidential servant or agent of the owners, and they are bound to the performance of all lawful contracts made by him, relative to the usual employment of the ship, and the repairs and other necessaries furnished for her use. This rule is established as well upon the implied assent of the owner as with a view to the convenience of the commercial world.

The language quoted from the *St. Jago de Cuba* and the *Arora* was quoted by this court in the *Kate* and the *Valencia* (*supra*), and it was carefully pointed out in both those cases that no supplies were ordered by a master.

In the *Hatteras*, 255 Fed. 518, 520, Judge Hough said:

> We lay aside all decisions concerning liens asserted to rest on dealings with a shipmaster. The authority of a master by virtue of his office is so ancient, extensive, and universally accepted as to give to the "captain's orders" a standing quite different from the agreements of all other agents.

The *South Coast case* as thus understood is in harmony with all the other decisions concerning liens for supplies ordered by a master, and is in harmony with the decisions holding that a charterer has no

authority to impose liens on a vessel for supplies which he himself has agreed to provide and pay for.

Giving the *South Coast case* its broadest application, it can not be said that under this charter party the charterer had any authority to subject either the *Clio* or the *Morganza* to liens for supplies which it was to provide and pay for. The clauses in question in the *Morganza* and *Clio* charters and that in the *South Coast* are as follows:

MORGANZA CHARTER.

The charterers will not suffer nor permit to be continued any lien, encumbrance, or charge which has or might have priority over the title and interest of the owner in said vessel; but the charterers will in due course, and in any event within fifteen days after the same becomes due and payable, pay, discharge, or make adequate provision for the satisfaction or discharge of every lawful claim or demand *which, if unpaid, might, in equity, in admiralty, at law, or by any statute of this or any other nation where said vessel may be navigating or berthed, have such priority over the said title and interest, or might operate as a lien, encumbrance, or charge upon said vessel, or cause its detention in port;* or will cause said vessel to be released or discharged from any such lien, encumbrance, or charge in any event within fifteen days after such lien, encumbrance, or charge is imposed upon said vessel. * * * (Italics ours.)

SOUTH COAST CHARTER.

Tenth. Said party of the second part further covenants * * * that if said payments (charter hire) be not made, then at the option of the first party said vessel will be delivered to the said party of the first part * * * free from all liens and claims of every kind or description whatsoever during the term of this charter party, except the lien for any salvage services that may be rendered to said vessel, and that he, the said party of the second part, will *hold* and *save harmless* the said party of the first part from all liens, claims, or demands upon or against said vessel that may be preferred against the said party of the first part or against the said vessel, and arising or created during the term of this charter party, except any claim for salvage services that may be rendered to said vessel, and further will save said party of the first part harmless from all liens, losses, damages, costs, or expenses that said party of the first part may sustain or be put to in consequence of such liens, claims, or demands, or in respect to any litigation arising out of or in respect thereto or connected therewith.

The charter party in the *South Coast case* provides
t the vessel shall be redelivered to her owner free
l clear of all liens and claims of every kind except
s for salvage services. The charter in the *Clio-*
rganza provides that the charterers will not suffer
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paid, might in equity, in admiralty, at law, or by any
tute of this or any other nation where said vessel
y be navigating or berthed, have such priority over
said title and interest, or might operate as a lien,
umbrance, or charge upon said vessel.

There is no implication in the *Clio-Morganza*
rters that the charterer may impose liens and
n pay them off. That provision means that he
st pay any claim which might possibly be a lien
inst the ship or which might ripen into a lien by
local law or by the law of a foreign country.
ere are many claims which constitute liens against
sels regardless of anything that the owner or
rterer may do, such as *seamen's wages, pilotage,*

port dues, cargo claims, collision damage, and *salvage.* It is submitted that a provision by which a charterer agrees to pay within fifteen days any claims which, if unpaid, might in equity or admiralty by the law of this or any foreign nation become a lien on the vessel is not authority to create such liens.

A provision similar to that in the charter in the instant case was considered by the Circuit Court of Appeals for the Second Circuit in the *Oceana,* 244 Fed. 80. The agreement in that case provided:

> (5) Until said ship is completely paid for the purchaser covenants as follows:
>
> (a) To keep said ship clear of any liens from any cause, and if any lien or libel is filed or asserted, the same shall be immediately bonded by the purchaser. The purchaser agrees to promptly pay current bills for supplies and repairs to said ship and exhibit at reasonable time the ship's accounts and bills to seller's representatives.

In speaking of this provision the court said:

> The libelants contend that this provision as to bonding is an authority to the vendee to create liens; but we regard it, on the contrary, as a prohibition added out of abundant caution.

The provisions of the charter in the instant case were inserted out of an abundance of caution to insure the prompt payment of claims which might appear to be liens against the vessel or which might become liens against her in spite of anything the

owner could do. Such a clause can not be construed as impliedly or expressly granting to the charterer authority to impose liens on the vessels.

I–B.

The fact that the order for the supplies came from a shore agent and not from the master put the supply man on inquiry as to the extent of the authority of the person giving the order to bind the vessel. His failure to make any inquiry rebuts any possible presumption of authority in the person giving the order to impose a lien on the vessel.

The lien statute of 1910 (36 St. L. 604) does provide in section 2 that—

> The following persons shall be presumed to have authority from the owner or owners to procure repairs, supplies, and other necessaries for the vessel: The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is intrusted. No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

But the statute also places a limitation upon the presumption given in section 2 and provides in section 3 that—

> Nothing in this act shall be construed to confer a lien when the furnisher *knew, or by the exercise of reasonable diligence could have ascertained*, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor. (Italics ours.)

The lien statute of 1910 was amended by the merchant marine act of 1920 (41 St. L. 1005) and its scope broadened to include towage. The change in no way affects liens for "necessaries" or "supplies" such as are involved in this case.

The supplies in this case were ordered by one Prosser, marine superintendent or port captain of the States Steamship Corporation, the charterer of the *Clio* and *Morganza*. Neither the master nor any officer of either vessel had anything to do with these supplies. (Rec. 3.)

Prior to the lien statute of 1910 it was assumed in a number of well-considered cases that there was a presumption of authority in a charterer to impose liens on a vessel for necessary supplies. With this presumption the courts held that a person receiving an order from a shore agent, or anyone other than the master, was put upon inquiry as to the relation of the person giving the order to the vessel and as to his authority to bind the vessel. If the supply man failed to make any inquiry, he was charged with knowledge of such facts and circumstances as a reasonable inquiry would have disclosed.

In the *Kate*, 164 U. S. 458, coal was supplied to a British vessel on the order of a steamship company in New York. The supply man knew that the steamship company from whom he received the order owned some vessels and chartered others, but made no inquiry as to which were chartered and which were owned or as to the terms of the charter party.

None of the coal was ordered by the master. This court denied the supply man a lien, saying through Mr. Justice Harlan, at 465:

> We are of the opinion that as the libellant knew, or under the circumstances is to be charged with knowledge, that the charter party under which the *Kate* was operated obliged the charterer to provide and pay for all the coal needed by that vessel, no lien can be asserted under the maritime law for the value of coal supplied under the order of the charterer, even if it be assumed that the libellant in fact furnished the coal upon the credit both of the charterer and of the vessel. As the charterer had agreed to provide and pay for all coal used by the vessel, he had no authority to bind the vessel for supplies furnished to it. His want of authority to charge the vessel for such an expense was known or could have been known to the libellant by the exercise of due diligence on its part.

After reviewing the series of cases where supplies were furnished on the order of a master, Mr. Justice Harlan said, at 470:

> If no lien exists under the maritime law, when supplies are furnished to a vessel upon the order of the master, under circumstances charging the party furnishing them with knowledge that the master can not rightfully, as against the owner, pledge the credit of the vessel for such supplies, much less is one recognized under that law where the supplies are furnished, not upon the order of the master, but upon that of the charterer who did not

> represent the owner in the business of the vessel, but who, as the claimant knew, or by reasonable diligence could have ascertained, had agreed himself to provide and pay for such supplies, and could not, therefore, rightfully pledge the credit of the vessel for them.

In the *Valencia*, 165 U. S. 264, coal was ordered at the port of New York by the New York Steamship Company, a New Jersey corporation, with a place of business in New York. The coal was delivered in six different lots, between April 30th and July 5th, 1890. The libellants were, at the time the coal was delivered, without knowledge of the ownership of the vessel or the relations between it and the New York Steamship Company, except that that company appeared to be directing its operations. The libellants made no inquiry as to the solvency of the steamship company or the owner of the vessel, or the nationality of the vessel, but in the belief that the ship was responsible for the supplies delivered the coal to her. None of the coal was ordered by the master. In denying a lien, Mr. Justice Harlan said (at p. 270):

> Although the libellants were not aware of the existence of the charter party under which the *Valencia* was employed, it must be assumed upon the facts certified that by reasonable diligence they could have ascertained that the New York Steamship Company did not own the vessel, but used it under a charter party providing that the charterer should pay for all needed coal. The libellants knew that the steamship company had an office in the city of New York. They did business with

> them at that office, and could easily have ascertained the ownership of the vessel and the relation of the steamship company to the owners. They were put upon inquiry, but they chose to shut their eyes and make no inquiry touching these matters or in reference to the solvency or credit of that company.

And again, at page 272:

> Under what circumstances, if under any, a charterer who has control and possession of a vessel under a charter party requiring him, at his own cost, to provide for necessary supplies and repairs, may pledge the credit of the vessel, it is not necessary now to determine. We mean only to decide, at this time, that one furnishing supplies or making repairs on the order simply of a person or corporation acquiring the control and possession of a vessel under such a charter party can not acquire a maritime lien if the circumstances attending the transaction put him on inquiry as to the existence and terms of such charter party, but he failed to make inquiry, and chose to act on a mere belief that the vessel would be liable for his claim.

These two cases do not decide that there is a presumption of authority in a charterer to impose liens on a vessel for necessary supplies, but they do decide that, assuming such presumption exists, there is a duty to inquire and that failure to make inquiry successfully rebuts any such presumption. The duty to inquire exists when the order comes from any person other than the master.

The lower Federal courts have applied the rule laid down in the *Kate* and the *Valencia*, holding that, assuming there is a presumption of authority in the charterer to impose liens on the vessel, there is also a duty upon the supply men to make inquiry as to the authority of the person giving an order when that order comes from some one other than the master.

In *The Beinecke* v. *The Secret*, 3 Fed. 665, 667, supplies were ordered by the charterer. The vessel was owned by a foreign corporation, with an office in New York. The charterer also had an office in New York. Under the charter party the charterer was to provide and pay for the coal. The libelant did not know who owned the vessel, of the existence of a charter party, or the relation of the person ordering the supplies to the vessel. In denying a lien, the court said:

> They knew they were dealing with New York parties and not with the foreign owner or master, who presumably represents the owner, and they were put upon inquiry as to the interest and relation of Murray, Ferris & Co. to the vessel, and are chargeable with the facts they might have ascertained on such inquiry. They could easily have learned that Murray, Ferris & Co. had no right or power to bind the owners or the vessel for the supplies, * * *.

In *The Secret*, 15 Fed. 480, Judge Blatchford said:

> Although the *Secret* was in a foreign port, and although Murray, Ferris & Co., when ordering the coal, stated to Russell & Hicks that

> it was for the *Secret*, yet the circumstances were such that the libellant's agents, Russell & Hicks, were put upon inquiry, from which they could easily have learned this, notwithstanding the above facts. Murray, Ferris & Co. were the charterers of the vessel and had no power to bind the claimant or the vessel to pay for coal bought for her. If they had used due diligence they would have ascertained such want of power.

In *The General J. A. Dumont*, 158 Fed. 312, repairs were ordered by the charterer. The repair man knew that the person ordering the repairs was not the owner and he could easily have ascertained his relation to the vessel. In denying a lien the court said the case was controlled by *The Kate* and *The Valencia*, and the repair man was charged with such knowledge as a reasonable inquiry would have disclosed.

In the *Northwestern Fuel Co.* v. *Dunkley Williams Co.*, 174 Fed. 121, 123, the owners of the *Petoskey* chartered her to the Chicago Transportation Company. The latter, under the name of the Chicago & Milwaukee Line, ordered coal from the libellant's agent in Milwaukee. The latter had a book containing the names of all steamers on the lakes, with the names and addresses of the owners. The agent consulted this book, learned that Dunkley Williams Company, of Chicago, were the owners, but made no inquiry. The libellants had their main office in Chicago. In denying a lien, the court said:

> The term "Chicago & Milwaukee Line" seems to have been merely descriptive of a

470 of the opinion of this court in the *Kate*. Congress with a purpose used in the statute the words of this court. This purpose must have been to leave the law as to liens for supplies ordered by a charterer as it was set forth in the *Kate* and the *Valencia*. This intention of Congress is clearly expressed in the reports of the committees of both Houses (S. Rept. 831; H. Rept. 772; 61st Cong., 2d sess.). These reports state:

> Section 3 codifies the law with respect to necessaries furnished chartered vessels and vessels operated by a person other than the real owner, the phraseology, in part, being taken from an opinion of the Supreme Court of the United States.

In the *Yankee*, 233 Fed. 919, 926, the Circuit Court of Appeals for the Third Circuit, in speaking of section 3, said:

> This proviso is nothing more than a statutory declaration of a principle long recognized in maritime jurisprudence and repeatedly announced by the Supreme Court of the United States. *The Kate*, 164 U. S. 458, 17 Sup. Ct. 135, 41 L. Ed. 512; *The Valencia*, 165 U. S. 264, 17 Sup. Ct. 323, 41 L. Ed. 710.

The *Valencia* was recognized as still being good law after the lien statute by the Circuit Court of Appeals for the Second Circuit in the *Oceana*, 244 Fed. 80, 83, and the court, speaking of the *Valencia*, said:

> It is not applicable. In that case the least inquiry would have disclosed the fact that the company operating the steamer was a charterer bound to pay for the coal; but the libelant supplied coal, not on the order of the

> master, but of the company, without making any inquiry whatever.

The *Yarmouth*, 262 Fed. 250, has sometimes been cited as authority for the proposition that the rule of the *Valencia* was changed by the statute, but the court in the *Yarmouth* held that the libelant would have had a lien prior to the statute and that he still had a lien after the statute. All the court decided was that the supply man's rights were as great after the statute as they were before it. The *Yarmouth* was considered by the Circuit Court of Appeals for the Fifth Circuit in *Pensacola Shipping Co.* v. *Fleet Corporation*, 277 Fed. 889. Judge Walker, who wrote the opinion in the *Yarmouth*, said of it in the *Pensacola case*:

> In the cited case there was no evidence tending to prove that anyone who was to be presumed to be able to furnish information as to the terms of the charter party was within reach of the libelant at or prior to the time the supplies were furnished.

In the *Louis Dolive*, 236 Fed. 279, 283 (D. C., E. D., La.), Judge Foster said:

> In my opinion anyone opening a new running account with a steamboat, especially in her home port and when her supplies are not ordered by her captain, is charged with the duty of at least inquiring as to the authority of the person ordering the supplies to bind the vessel, if he intends to rely on the credit of the vessel for payment.

The *Kate* and the *Valencia* were cited as authority for this proposition. The *Louis Dolive* was not referred to by the Circuit Court of Appeals for the

Fifth Circuit in either the *Yarmouth* or the *Pensacola cases*, and its authority is not in any way infringed by those decisions.

This court held in the *Piedmont and Georges Creek Coal Co.* v. *Seaboard Fisheries*, 254 U. S. 1, that the lien statute of 1910 made three and only three changes in the existing law relating to maritime liens: (1) abolished the distinction between foreign and domestic vessels; (2) relieved the supply man of the necessity of alleging or proving credit was given to the vessel; (3) and substituted a single Federal statute for conflicting State statutes.

Mr. Justice Brandeis said, at page 11:

> It is urged by the coal company that it was the intention of Congress in passing the act to broaden the scope of the maritime lien and that the construction of the act adopted by the Circuit Court of Appeals renders the statute inoperative in an important class of cases which it was intended to reach. The language of the statute affords no basis for the latter assertion, and the reports of the committees of Congress (Senate Report, No. 831, 61st Cong., 2d sess.) show that it is unfounded. Those reports state that the purpose of the act was this: *First*, to do away with the artificial distinction by which a maritime lien was given for supplies furnished to a vessel in a port of a foreign country or State, but denied where the supplies were furnished in the home port or State. *The General Smith*, 4 Wheat. 438. *Second*, to do away with the doctrine that, when the owner of a vessel contracts in person for necessaries or is present in the port when they are ordered,

it is presumed that the material man did not intend to rely upon the credit of the vessel, and that hence no lien arises. *The St. Jago de Cuba*, 9 Wheat. 409. *Third*, to substitute a single Federal statute for the State statutes in so far as they confer liens for repairs, supplies, and other necessaries. *Peyroux* v. *Howard*, 7 Pet. 324. The reports expressly declare that the bill makes "no change in the general principles of the present law of maritime liens, but merely substitutes a single statute for the conflicting State statutes."

The only case which holds that the statute has changed the law as laid down in the *Kate* and the *Valencia* is the *St. Johns*, 273 Fed. 1005, and that case is now before this court on writ of *certiorari*. The *Valencia* has been recognized as good law since the statute in the second, third, and fifth circuits, as indicated in the *Oceana*, *Yankee*, and the *Yarmouth* and *Pensacola* cases.

The facts in the cases of the *Clio* and in the *Valencia* are identical.

CLIO.	VALENCIA.
1. Supplies were ordered by the charterer, not by the master.	1. Supplies were ordered by the charterer, not by the master.
2. Charterer had no authority to impose liens on the vessel.	2. Charterer had no authority to impose liens on the vessel.
3. The libelant did not know of the existence of the charter party or its terms.	3. The libelant did not know of the existence of the charter party or its terms.
4. The libelant made no inquiry as to the relation of the person giving the order to the vessel or his authority to bind her.	4. The libelant made no inquiry as to the relation of the person giving the order to the vessel or his authority to bind her.
5. All the transactions took place in New York City where both libelant and charterer did business.	5. All the transactions took place in New York City where both libelant and charterer did business.

The libelants on receiving the orders for supplies for both the *Clio* and *Morganza* from a shore agent of the charterer failed to exercise reasonable diligence to ascertain the authority of the person giving the order to impose liens on them. By a simple inquiry, such as due diligence requires, they could have ascertained the truth, and were charged with knowledge of it. The libelants, therefore, would not have acquired a maritime lien on either the *Clio* or *Morganza* if both had been privately owned.

I–C.

Any possible presumption of authority in the person ordering the supplies for the "Morganza" to impose a maritime lien on the vessel is rebutted by knowledge in fact in the supply man of his lack of such authority.

The libelant was represented in all these transactions solely by one Cunningham, who dealt with one Prosser, marine superintendent or port captain of the States Steamship Corporation, charterer of the *Morganza*. (Rec. 1.)

"In August, 1920, Cunningham went to Washington, D. C., on business which brought him before the United States Shipping Board, or representatives thereof. While in Washington, or shortly before going, he learned that *Clio* and *Morganza* were in State Corporation's possession under what he described as 'partial-payment purchases.' He never made any inquiry to discover what that phrase meant, although it was easy so to do. If he had asked, he would have learned in Washington, and at once, that *Morganza* had (on December 8, 1919) been chartered to State Corporation by the owners * * *, and

that said charter contained" the provisions hereinbefore referred to which deny authority to the charterer to impose liens on the vessels. (Rec. 1, 2.)

The Circuit Court of Appeals found as a fact that "Cunningham was in August, 1920, well aware of facts and circumstances putting him and his employers and principals on inquiry, and made no inquiry, but preferred or chose to void the same." (Rec. 2, 3.)

"On returning to New York Cunningham sold through Prosser, as before, and delivered to and on board *Morganza* certain other 'supplies,' and bills for same were rendered to S. S. *Morganza* and owners State S. S. Corporation." (Rec. 3.)

Cunningham's action in refraining from making any inquiry as to the meaning of the phrase "partial-payment purchasers" amounted to shutting his eyes to keep out the light. He was well aware of facts and circumstances, as the court found, putting him and his principals upon inquiry as to the meaning of that phrase. He is as a matter of fact charged with knowledge of such facts as a reasonable inquiry would have disclosed, and the simplest inquiry would have resulted in his learning of the terms and provisions of the charter party hereinbefore referred to. This knowledge clearly rebuts any presumption of a lien in favor of the libelants on the *Morganza*.

In the *Huron*, 271 Fed. 781 (D. C., E. D., Pa.), the libelant knew that the person ordering the supplies was not the owner. The court held that under these circumstances he was bound to make an inquiry, and

that such inquiry would have disclosed that the vessel was under charter and that the charterer was to provide and pay for the supplies in question.

In the *Francis J. O'Hara*, 229 Fed. 312, D. C. Mass., salt was ordered by the master of a fishing vessel. The libelant knew the vessel was on a lay, but did not know who was to provide and pay for the salt under the lay. The court held:

> It seems to me that the petitioner, knowing the vessel was on a lay, was bound to inquire whether that lay was one under which she or the master and crew was to pay for the salt. The *Eureka*, D. C. Cal., 209 Fed. 373. The slightest inquiry would have disclosed that the master had no authority to buy it on the vessel's account.

In the *Yankee*, 233 Fed. 919, C. C. A. 3rd Cir., supplies were ordered by a charterer. The secretary and treasurer of the libelant knew the person ordering the supplies was a charterer. The court held this was a circumstance which suggested a doubt and compelled an inquiry, and denied a lien.

In the *Oceana*, 244 Fed. 80, certiorari denied, 245 U. S. 656, it was held that knowledge that the person ordering the supplies was not the owner required the libelants to make further inquiry, and denied a lien to those persons who had such knowledge and made no inquiry.

In the *Cratheus*, 263 Fed. 696, a lien was claimed for coal supplied to the *Cratheus* on the order of the charterer. The supply man knew that the person

ordering the coal was a charterer, but did not know the terms of the charter party. No inquiry was made as to the terms of the charter party, although it was available. The court held there was a duty to inquire and for failure to make any inquiry a lien was denied for supplies the charterer was to provide and pay for.

In the *Pensacola Shipping Co.* v. *Fleet Corporation*, 277 Fed. 889, a charterer in New York ordered coal in Pensacola. The supply man knew that he was dealing with a charterer. Before the coal was supplied he had time to ascertain from New York the terms of the charter party, which required charterer to provide and pay for all needed coal. No inquiry was made. The court charged the supply man with notice of the terms of the charter party, which he could have ascertained by inquiry, and denied a lien.

The libelants are charged as a matter of fact with knowledge of the lack of authority in the States Steamship Corporation and in Prosser to impose liens on the *Clio* and *Morganza*. This knowledge was acquired prior to the time the supplies for the *Morganza* were ordered. (Rec. 3.) The libelants received this order, knowing that the person giving it was without authority to lien the vessel, and with this knowledge filled the order. Under such circumstances they had no right to look to the vessel for security, and therefore acquired no maritime lien on her.

II.

The United States is not liable for the amount which would have been a lien on the "Clio" and "Morganza" had they been privately owned.

The necessaries or supplies were ordered by one Prosser, marine superintendent or port captain of the States Steamship Corporation, charterer of the *Clio* and *Morganza*. The charterer was to pay a certain sum as charter hire for the vessels and to pay all operating expenses. The United States had nothing to do with the operation of the vessels except to collect its charter hire, which was due whether the vessels moved or not, or whether they earned any freight or not. Neither Mr. Prosser nor his principals, the States Steamship Corporation, in any way represented the United States. There was no privity of contract between the United States and the libellants and, therefore, no personal liabilty to the libellants on the contracts made by them with the States Steamship Corporation.

It is contended, however, that under the Suits in Admiralty Act, 41 St. L. 525, approved March 9, 1920, the remedy of enforcing a maritime lien by an action *in rem* against a vessel owned by the United States is gone and that there is substituted for that remedy a right *in personam* against the United States in admiralty; that is, a new right is given in place of an old remedy. An examination of the act itself fails to show that any such new right was created. The first section provides:

> That no vessel owned by the United States or by any corporation in which the United

> States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided*, That this act shall not apply to the Panama Railroad Company.

The second section provides:

> That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, *a libel in personam may be brought against the United States or against such corporation*, as the case may be, provided that such vessel is employed as a merchant vessel or is a tugboat operated by such corporation. (Italics ours.)

The language of section 2, "a libel in personam may be brought against the United States or against such corporation," does not purport to give any new right. It is appropriate to express, and does express, a waiver of the immunity of the United States in admiralty as to suits *in personam*, or it expresses a consent on the part of the United States to be sued in admiralty *in personam*. There are no words used which in any way indicate the creation of a new right against the United States in place of the old

remedy which has been taken away. It is merely the substitution of a new remedy for an old one.

This construction is borne out by the history of the act and the legislation leading up to it. Prior to the shipping act of 1916 no suit could be brought against the United States or against a vessel owned by or in the possession of the United States. This was true as to all torts and as to contractual obligations excepting suits brought in the Court of Claims and in the District Court under the Tucker Act (24 St. L. 505). The shipping act of 1916 altered this rule by allowing actions *in rem* against certain Government-owned vessels. (The *Lake Monroe*, 250 U. S. 246.) Even after this no suit would lie against the United States in the District Court except under the Tucker Act.

A new liability, such as is contended for here, should not be held to be created against the sovereign without definite and express language to that effect. In speaking of the Tucker Act this court said, in *Schillinger* v. *United States*, 155 U. S. 163, 166:

> The United States can not be sued in their courts without their consent, and in granting such consent Congress has absolute discretion to specify the cases and contingencies in which the liability of the Government is submitted to the courts for judicial determination. Beyond the letter of such consent the courts may not go, no matter how beneficial they may deem or in fact might be their possession of a larger jurisdiction over the liabilities of the Government.

The courts have never even suggested that the Tucker Act, which extends the jurisdiction of the Court of Claims to the district court in certain cases, creates any new rights or any new liabilities, and yet it is contended here that the permissive language of the suits in admiralty act does create a liability where none existed before, and where in the case of a private owner there would be no liability *in personam*. To hold that the act does create such a new liability would impose upon the United States a liability of many millions of dollars for which, apart from the act, there is no legal or moral responsibility. Such an interpretation should not be adopted unless required by clear and plain language. But it is said that unless the act creates a new right of action and permits the claimant to enforce against the United States in personam whatever rights he may have against the vessel in rem he may be left without any remedy in cases where he has a right in rem against the vessel, but no right in personam against the United States. While the claimant's right in such a case to proceed against the operator of the vessel is in no way affected by the act, it is quite true that his only valuable remedy may be against the vessel. But even the denial of the right to proceed against the vessel would only mean a postponement of the claimant's remedy until the vessel had passed into private hands, and at the time of the passage of the suits in admiralty act shortly before that of the merchant marine act 1920, it was the expecta-

tion of Congress that all of the vessels owned by the United States should pass into private hands as promptly as possible.

A further explanation of Congress' failure to provide a remedy in such case may be found in the fact that at the time of the passage of the suits in admiralty act the bareboat chartering of vessels was extremely rare, while it was generally expected that the vessels owned by the United States would be sold and a mortgage taken back under the terms of the preferred-mortgage act passed at the same time by Congress, to a considerable extent to assist the Shipping Board in disposing of its vessels. Certainly, nowhere in the reports or debates in Congress do we find any intimation that Congress had such a situation as the present in mind.

The appellees contend that because section 1 of the act in taking away from claimants the right of arrest recites that this is done "in view of the provision herein made for a libel in personam," the result of that provision must be to give to the claimants precisely the same rights which they possessed before. If the claimants had a vested right in the remedy created by the shipping act of 1916, there might be force in this argument, but such, of course, is not the case. It was entirely within the power and discretion of Congress to take away that remedy entirely or to substitute whatever commended itself to its judgment. All agree that the act did not substitute for the remedy created by the shipping act of 1916 a precise equivalent. In

some respects the remedy created by the suits in admiralty act is far broader than the previously existing remedy.

Under section 9 of the shipping act of 1916, as construed by this court in *The Lake Monroe*, 250 U. S. 246, a right in rem is created against vessels purchased, chartered, or leased from the Shipping Board while employed solely as merchant vessels. No remedy is created with respect to any other vessels owned or operated by the United States, even though employed exclusively as merchant vessels, such, for example, as the barge line on the Mississippi and Warrior Rivers, operated by the War Department. Nor was any remedy created with respect to vessels operated by the Shipping Board when proceeding in ballast, or with nothing but Government cargo on board, or while laid up, or in drydock, or undergoing repairs. The suits in admiralty act does create a remedy with respect to all of these vessels. Furthermore, under the shipping act a claimant had no remedy unless he could seize the vessel. If he could not find the vessel, or if the vessel were lost, no remedy was afforded to him.

Under the suits in admiralty act he is given a remedy against the United States for any liability incurred by the United States as the result of the operation by it of any merchant vessel.

Having thus greatly broadened the remedies afforded to claimants, Congress may have decided that it had gone far enough, and that it was not desirable to give to claimants a remedy in cases where the

United States had incurred no obligation or liability. Certainly, it is to be expected that any intention on the part of Congress to impose upon the United States liabilities incurred by others and for which the United States was under no legal or moral obligation would have been expressed in clear and unmistakable language, and that such liabilities would have been clearly defined and limited, and provision made to give to the United States a right to recover back the amount so paid by it from those who had in fact incurred the obligations which it thus assumed. In all these respects the act is singularly deficient.

That Congress did not suppose that it was creating a new liability on the part of the United States by the provisions of sections 1 and 2 of the suits in admiralty act is somewhat indicated by the provisions of sections 3 and 4 of that act. The last sentence of section 3 provides for a cancellation of any bonds or stipulations previously given in admiralty causes by the United States "upon the filing of a suggestion by the Attorney General, or other duly authorized law officer, that the United States is interested in such cause, and assumes liability to satisfy any decree included within such bond or stipulation. * * *" And section 4 provides for the release of a privately owned vessel arrested by reason of a lien resulting from previous possession, ownership, or operation of such vessel by the United States. Such release is to occur upon the suggestion by the United States "that it is interested in such cause, desires such release, and assumes liability for the satisfaction

of any decree obtained by the libelant in such cause, and thereafter such cause shall proceed against the United States in accordance with the provisions of this act."

If sections 1 and 2 create a liability on the part of the United States it would have been necessary to provide in sections 3 and 4 merely that the causes should proceed against the United States in accordance with the provisions of the act, and it would have been entirely unnecessary to provide for a suggestion by the Attorney General that the United States assumes the liability. The fact that Congress where it does intend that the United States shall become liable in personam for any liability of the vessel requires an assumption of liability to be filed by the United States is certainly some support for the argument that where, as in sections 1 and 2 of the act, no provision is made with respect to any assumption of liability by the United States no such liability on the part of the United States is intended or created.

In any event, however, the mere fact that the statute does not afford a remedy in all cases is no justification for interpreting it contrary to its plain language in order to remedy by judicial legislation the assumed deficiency.

If it be thought that the language used, "A libel in personam may be brought against the United States or against such corporation" is ambiguous and requires interpretation it is necessary to consider some of the results which would flow from giving the language of the act the meaning con-

tended for by the appellees, namely, the creation of a right of action.

At the outset it seems fair to assume that Congress could not have intended to place a claimant asserting a lien against a vessel owned by or in the possession of the United States in a more favorable position than a claimant asserting a lien against a vessel under like circumstances but privately owned or possessed. To express it in another form, Congress certainly could not have intended in compensating claimant for the loss of his right to proceed in rem against the vessel to give him a greater recovery than he could have secured had his right against the vessel not been interfered with.

What then is the right of the claimant who has a lien upon a vessel but with no personal liability on the part of the owner of the vessel? He may proceed against the vessel, cause it to be seized and sold, the proceeds of the sale deposited in the registry of the court and may receive out of the funds in the registry of the court the share to which by virtue of his lien upon the vessel he may be held to be entitled. It is to be noted, however, that his recovery is limited to the proceeds of the vessel and that he must share those proceeds with whatever other lienors may assert their claims against the fund in accordance with the respective priorities of their liens.

What is the situation of such a claimant if it be held, as contended by the appellees, that the act creates a right of action against the United States

in personam? Apparently the result of such interpretation of the act is to permit all claimants to recover from the United States the full amount of their claims. Thus a claimant with a lien upon a vessel owned by the United States to the extent of $500,000 may recover from the United States the full amount of his claim notwithstanding the fact that at the time of bringing his suit the vessel would have brought at marshal's sale not more than $50,000, and notwithstanding the fact that there may be other lienors with equally valid liens amounting to several hundred thousand dollars in addition. Had the vessel been privately owned all of the lienors would have shared in accordance with the respective priorities of their liens the fund of $50,000, and would have had no right whatever to proceed against the owner of the vessel.

Nor is such a supposed case purely imaginary. The enormous fall in vessel values during the past few years makes what might otherwise seem an impossible case not far different from actual facts.

That such a result was never intended by Congress and must in some way be avoided can hardly be doubted. We believe that it should be avoided by the interpretation of the act for which we contend, namely, that Congress only intended to waive the immunity of the sovereign with respect to suit, but not to create causes of action against the sovereign. The only alternative is to create by a species of judicial legislation a system of limitation of liability of the United States under the act. In some cases this

has been done without objection by the claimant by a surrender of the vessel with respect to which the lien is asserted to the court where the suit in personam against the United States has been brought. It may be that the courts would be justified in creating such a system of limitation of liability in order to avoid the intolerable results of imposing upon the United States full liability for all claims constituting liens upon vessels owned by or in the possession of the United States. Such a proceeding, however, could hardly have been contemplated by Congress, since the primary purpose of the suits in admiralty act was to insure the uninterrupted possession of the vessel by the United States. If the United States, in order to avoid liability for the full amount of all liens upon the vessel, irrespective of its value, must surrender the vessel, the primary purpose of the act is thus defeated.

If it be urged that in place of the surrender of the vessel the United States shall be entitled to limit its liability to the value of the vessel still other difficulties are encountered, apart from the fact that the act itself makes no provision for such limitation. As of what date will the value be taken and shall it be the value of the interest of the United States in the vessel or the value of the vessel itself? The latter inquiry is particularly pertinent when it is remembered that the act permits suit against the United States not only in cases where the vessel is owned by the United States, but also in cases where

the vessel is in the possession of the United States. Thus, under the latter circumstance, the value of the interest of the United States in the vessel may be nothing, it may be in possession of the vessel under the terms of an unfavorable charter party, or one about to expire. Not only may its interest in the vessel be of little or no value, but it may be powerless to surrender the vessel to the court.

The very fact that the act treats ownership of the vessel by the United States and possession of the vessel by the United States as of equal value in conferring upon the claimant the right to bring suit against the United States in personam argues strongly against the intention of Congress to create a cause of action against the United States. Even if it be supposed that Congress was willing to create a cause of action against the United States with respect to vessels owned by the United States, it is difficult to believe that Congress would be willing to create a cause of action against the United States with respect to vessels merely in the possession of the United States.

Can it be supposed that Congress intended, as the price of continued peaceful possession for however short a period by the United States of a vessel in which it had no interest, to create a cause of action against the United States for whatever liens might at at any time, or by any previous owner, have been imposed upon the vessel?

Consider again the remarkable character of the alleged cause of action created by the act against the

United States. So long as the United States owns the vessel or has it in its possession, the claimant, it is said, has a cause of action against the United States, but let the United States part with its title and its possession of the vessel and immediately the cause of action against the United States is extinguished. If again the United States gains title to the vessel, or even momentarily regains mere possession of the vessel, the cause of action against the United States comes again into existence.

Surely, if such results were intended by Congress, we should expect to find more definite language than "A libel in personam may be brought against the United States."

Again, it is to be noted that the same provision is made with respect to corporations, all of whose stock is owned by the United States, as with respect to the United States. It may well have been thought necessary to provide that suit would lie against such corporations because otherwise they might successfully assert that they are entitled to the immunity of their principal and owner. But Congress could not impose any liability whatever upon such corporations. Whatever the interests of the stockholders might be and however subject to control by Congress, where the United States is the sole stockholder, Congress could not create a liability of the corporation, thus ignoring the vested rights of the bondholders and other creditors.

III.

The United States is not liable for the personal indebtedness of the States Steamship Corporation in respect of supplies and necessaries furnished to a vessel in respect of which no maritime lien would have arisen had such vessel been privately owned.

The charter parties provided that the charterer should, at its sole expense, man, operate, victual, and supply said vessels, pay all costs incident to the use and operation of the vessels and operate them free of any expense of any kind to the owners. (Rec. 2.) For the use of the vessels the States Steamship Corporation was to pay hire monthly in advance. The United States was to receive this hire whether the vessels were operated or not and whether they earned any freight or not. All the obligations incurred in respect of supplies and necessaries furnished to either vessel were those of the States Steamship Corporation and were incurred by it as principal. The United States was not a party to those contracts in any way. There is no basis on which the contracts of the States Steamship Corporation can be held to be contracts of the United States. The latter did not in any way guarantee payment of the personal indebtedness of the States Steamship Corporation. To hold that there is liability on the part of the United States for this personal indebtedness of the States Steamship Corporation would mean that an owner of a chartered ship would be liable for all personal

obligations of the charterer in respect to that ship regardless of the provisions inserted in the charter party. It is, therefore, submitted that there can be no personal liability on the part of the United States for the indebtedness of the States Steamship Corporation in respect of supplies or necessaries furnished to either the *Clio* or the *Morganza*.

The United States asks this court to answer in the negative all the questions certified to it by the Circuit Court of Appeals.

Respectfully submitted.

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